

JUN 12 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

WILLIE NOBLES, an individual; VIRGINIA
PARHAM, as personal representative of the
Estate of Zynia Nobles,

Plaintiffs - Appellants,

v.

WASHINGTON STATE OF; DOC;
DEPARTMENT OF SOCIAL HEALTH
SERVICES; MOLLY MEE, an individual;
MICHELE GARNER, an individual; LYLE
QUASIM; CHRIS ROBINSON, an
individual,

Defendants - Appellees.

No. 02-35442

D.C. No. CV-01-05374-RJB

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Robert J. Bryan, District Judge, Presiding

Argued and Submitted June 6, 2003
Seattle, Washington

Before: B. FLETCHER, BRUNETTI, and McKEOWN, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or
by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

The State did not violate Zy’Nyia Nobles’s substantive due process rights by not protecting her from her mother’s violence. DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189, 197 (1989). Although Zy’Nyia was a dependent of the State of Washington, the State did not have physical custody of Zy’Nyia at the time of her death. See id. at 201. Nor did the State’s actions place Zy’Nyia in a “worse position than that in which [she] would have been had [the State] not acted at all.” Id.; Penilla v. City of Huntington, 115 F.3d 707, 709-710 (9th Cir. 1997).

The State did not violate Zy’Nyia’s procedural due process rights because she did not have a substantive right to protection from her mother. See Olim v. Wakinekona, 461 U.S. 238, 250 (1983).

AFFIRMED.